

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

MDL No. 2419
Master Dkt.: 1:13-md-02419-FDS

THIS DOCUMENT RELATES TO:

All Actions

**PLAINTIFFS' STEERING COMMITTEE'S
NOTICE OF DISPOSITIVE MOTION PROPOSAL**

At the September 12, 2013, the Court raised the concerns about outstanding dispositive motions and highlighted its concern that parties that have a statutory or other basis to obtain dismissal early be provided that opportunity. In light of the Court's concern, the PSC proposed that it identify certain motions that, although dispositive, do not necessarily provide an avenue for early dismissal for a party. The Court then requested that the PSC develop a plan going forward to address dispositive motions. Thereafter, the Court entered MDL Order No. 7 which stayed the response to all dispositive motions pending, thereby providing the PSC an opportunity to identify specific dispositive motions that do not request full dismissal of a party and to develop a plan for addressing dispositive motions going forward.

With regard to those motions that are purported dispositive motions but do not seek dismissal in full of a party, the PSC identifies the following current motions:

1. *Carman v. Ameridose, LLC*, Case No. 1:13-cv-12238-FDS, Dkt. No. 5, Defendants Motion for Summary Judgment.

The Court may recall that the *Carman* case was the subject of discussion at the September 12, 2013 status conference and the PSC anticipates that the Saint Thomas Outpatient

Neurosurgical Center (“STOPNC”), a clinic in Nashville, Tennessee, may file similar motions in the numerous cases recently filed against that entity. This motion for summary judgment seeks a ruling on whether the plaintiff can allege a claim under Tennessee’s products liability act or whether such a claim is subsumed into the Tennessee Medical Malpractice Act. This issue will be a global issue for Tennessee plaintiffs as the vast majority, if not all, of claims filed by Tennessee plaintiffs bring claims sounding in products liability and medical malpractice. This motion does not seek to dismiss STOPNC or any other entity entirely from the case but rather seeks dismissal only of a single claim. In other words, even if the Court granted the motion, litigation against STOPNC would continue.

With regard to the briefing of this and similar motions that may be filed by other Affiliated and/or Unaffiliated Defendants,¹ the PSC proposes the following approach:

1. For dispositive motions filed under Rule 12 that seek complete dismissal of a party, briefing on such motions shall proceed as required by Local Rule 7.1;
2. For dispositive motions filed under Rule 12 that seek dismissal of only claims but not of a party, the briefing on such motion shall be stayed pending further order of the Court;
3. For dispositive motions filed under Rule 56, such motions shall be dismissed without prejudice so that the PSC may proceed with discovery related to Rule 56 dispositive motions.

The PSC believes the above approach properly takes into consideration the Court’s valid concern that improperly named defendant is able to obtain early dismissal of suits while also taking into consideration plaintiffs’ need to timely and efficiently proceed against defendants subject to suit.

¹ For consistency, this notice will use the Definitions in MDL Order No. 7.

Dated: October 7, 2013

Respectfully submitted,

/s/ J. Gerard Stranch, IV
J. Gerard Stranch, IV
Benjamin A. Gastel
BRANSETTER, STRANCH & JENNINGS PLLC
227 Second Avenue North
Nashville, TN 37201
Phone: (615) 254-8801
Fax: (615) 255-5419
gerards@branstetterlaw.com

Tennessee Lead Counsel for PSC

Thomas M. Sobol
Kristen Johnson Parker
HAGENS BERMAN SOBOL SHAPIRO LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Phone: (617) 482-3700
Fax: (617) 482-3003
tom@hbsslaw.com
kristenjp@hbsslaw.com

Plaintiffs' Lead Counsel

Elizabeth J. Cabraser
Mark P. Chalos
LIEFF CABRASER HEIMANN & BERNSTEIN,
LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Phone: (415) 956-1000
Fax: (415) 956-1008
ecabraser@lchb.com
mchalos@lchb.com

Federal/State Liaison

Marc E. Lipton
LIPTON LAW
18930 W. 10 Mile Road
Southfield, MI 48075
Phone: (248) 557-1688
Fax: (248) 557-6344
marc@liptonlawcenter.com

Kim Dougherty
JANET, JENNER & SUGGS, LLC
75 Arlington St.
Suite 500
Boston, MA 02116
Phone: (617) 933-1265
kdougherty@myadvocates.com

Patrick T. Fennell
CRANDALL & KATT
366 Elm Avenue, S.W.
Roanoke, Virginia 24016
Phone: (540) 342-2000
pfennell@crandalllaw.com

Mark Zamora
ZAMORA FIRM
6 Concourse Parkway, 22nd Floor
Atlanta, GA 30328
Phone: (404) 451-7781
Fax: (404) 506-9223
mark@markzamora.com

Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, J. Gerard Stranch, hereby certify that on the 7th day of October, 2013, the foregoing document was served through the Court's ECF on the registered participants as identified on the Notice of Electronic Filing (NEF).

s/ J. Gerard Stranch, IV
J. Gerard Stranch, IV (TBA No. 023045)